

Article 16 | Nonconformities

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Sec. 16.1 General

16.1.1 Applicability

The regulations of this article govern nonconforming uses, nonconforming structures and nonconforming lots that came into existence legally but that do not comply with one or more requirements of this Zoning Ordinance.

16.1.2 Purpose and Scope of Regulations

It is the general policy of the town to allow uses, structures and lots that came into existence legally—in conformance with then applicable requirements to continue to exist and be put to productive use, but to bring as many aspects of such situations into compliance with existing regulations as is reasonably possible. This article establishes regulations governing uses, structures and lots that were lawfully established but that do not conform to one or more existing requirements of this Zoning Ordinance. The regulations of this article are intended to:

- A. Recognize the interests of property owners in continuing to use their property;
- B. Promote reuse and rehabilitation of existing buildings; and

- C. Place reasonable limits on the expansion and alteration of nonconformities that have the potential to adversely affect surrounding properties or the community as a whole.

16.1.3 Authority to Continue

Any nonconformity that legally existed on February 25, 2003 or that becomes nonconforming upon the adoption of any amendment to this Zoning Ordinance may be continued only in accordance with the provisions of this article. Unless otherwise expressly stated, any variation from these standards shall require review and approval as a Variance in accordance with the procedures of Sec. 3.13.

16.1.4 Determination of Nonconforming Status

The burden of establishing that any nonconformity is a legal nonconformity shall in all cases be upon the owner of such nonconformity. The burden of proof for establishing the existence of a lawfully nonconforming lot, use or structure shall not be upon the Town of Leesburg or the Zoning Administrator.

16.1.5 Repairs and Maintenance

Normal repairs and routine maintenance of nonconformities shall be permitted unless such repairs increase the extent of nonconformity or are otherwise expressly prohibited by this Zoning Ordinance. Nothing in this article shall be construed to prevent structures from being structurally strengthened or restored to a safe condition, in accordance with an official order of a public official.

16.1.6 Change of Tenancy or Ownership

The status of a nonconformity is not affected by changes of tenancy, ownership or management.

Sec. 16.2 Nonconforming Uses

16.2.1 Scope

The regulations of this section apply to all nonconforming uses, which are uses that were legally established but which no longer comply with the use regulations of the zoning district in which they are located.

16.2.2 Effect of Procedural Changes

Any use that was legally established at a time when no special form of approval was required for the subject use (e.g., special exception review and approval) shall not be deemed nonconforming merely as a result of not having obtained such approval. Any enlargement or expansion of such use shall be subject to the procedures and standards in effect at the time of such expansion.

16.2.3 Change of Use

- A. **Change to Conforming Use.** A nonconforming use may be changed to any use that is allowed in the zoning district in which it is located, subject to the all applicable standards and requirements applicable to the new use.
- B. **Conversion to Conforming Use.** Once a nonconforming use is converted to a conforming use it may not be changed back to a nonconforming use.

16.2.4 Loss of Nonconformity Status

- A. Abandonment.** Once abandoned, a nonconforming use shall not be reestablished or resumed. Any subsequent use or occupancy of the structure or open land must comply with the regulations of the district in which it is located and all other applicable requirements of this Zoning Ordinance.
1. Evidence of Abandonment. A nonconforming use shall be presumed abandoned when any one of the following has occurred:
 - a. The owner has in writing or by public statement indicated intent to abandon the use;
 - b. A conforming or less intensive nonconforming use has replaced the nonconforming use;
 - c. The building or structure housing the nonconforming use has been removed through the applicable procedures for the condemnation of unsafe structures;
 - d. The owner has physically changed the building or structure or its permanent equipment in a manner that clearly indicates a change in use or activity to something other than the nonconforming use; or
 - e. The use has been discontinued, vacant or inactive for a continuous period of at least 2 years.
 2. Overcoming Presumption of Abandonment. A presumption of abandonment based on the evidence of abandonment stated in paragraph "A.1" of this subsection may be rebutted upon a showing, to the satisfaction of the Board of Zoning Appeals, that the owner:
 - a. Has been maintaining the land and structure in accordance with all applicable regulations, including the Building Code, and did not intend to discontinue the use;
 - b. Has been maintaining all applicable licenses; and
 - c. Has filed all applicable tax documents.
 - d. In addition, the owner of the nonconforming use shall be required to demonstrate, to the satisfaction of the Zoning Board of Appeals, that during the period of inactivity or discontinuance the owner:
 - i. Has been actively and continuously marketing the land or structure for sale or lease;
 - ii. Or has been engaged in other activities that would affirmatively prove there was no intent to abandon.

16.2.5 Minor Enhancements to Nonconforming Use Facilities

A facility containing a nonconforming use and its related structures may be given minor enhancements, such as new roofing or façade elements, so as to improve the functionality, aesthetics, or safety of the nonconforming use so long as these minor enhancements do not increase the total allowed FAR or density currently existing or yield an intensification of the nonconforming use.

Sec. 16.3 Nonconforming Structures

16.3.1 Scope

The regulations of this section apply to nonconforming structures, which are structures that were legally established but which no longer comply with the Intensity and Dimensional Standards of Article 10.

16.3.2 Effect of Variances

If a variance is approved from otherwise applicable zoning district dimensional standards, the subject structure shall still be deemed nonconforming.

16.3.3 Use

A nonconforming structure may be used for any use allowed in the underlying zoning district, subject to all applicable use standards.

16.3.4 Expansion

A nonconforming structure may be enlarged or expanded if the expansion does not increase the extent of nonconformity.

16.3.5 Moving

A nonconforming structure may be moved if the movement or relocation eliminates the nonconformity. A nonconforming structure may also be moved if the movement is for the purpose of flood-proofing or removal of the structure from a floodplain and such movement will not increase the degree of nonconformity.

16.3.6 Loss Damage or Destruction

If a nonconforming principal structure is destroyed by any means, the owner may replace such structure provided that there is no increase in the extent of the nonconformity and provided that the repairs or reconstruction shall be undertaken within 2 years of the date of destruction and diligently carried on to its completion.

Sec. 16.4 Nonconforming Lots

16.4.1 Scope

The regulations of this section apply to nonconforming lots or record, which are lots or land parcels that were legally created but which no longer comply with the minimum area or width standards of the underlying zoning district. Nonconforming lots may be occupied and used in accordance with standards of this section.

16.4.2 Vacant Parcels

If the nonconforming lot was vacant at the time it became nonconforming, it may be used for any use allowed in the underlying zoning district. If one or more uses or intensities would comply with applicable setback requirements of the underlying zoning district while others would not, then only the uses or intensities that would conform to applicable setback requirements shall be permitted. Development on nonconforming lots shall comply with the dimensional standards of the underlying zoning district, except that required side yards may be reduced to no less than 10 percent of the lot width on each side, or five (5) feet on each side, whichever is greater.

16.4.3 Developed Lots

If the nonconforming lot contained a building or structure at the time it became nonconforming, then building or structure may be maintained or expanded in accordance with all applicable dimensional standards of the underlying zoning district.

16.4.4 Highway Realignment or Condemnation

Any lot, which by reason of realignment of a Federal or State Highway, or by reason of condemnation proceedings, has been reduced in size to an area less than that required by law, shall be considered a nonconforming lot of record subject to the provisions set forth in

this section. Any lawful use or structure existing at the time of such highway realignment or condemnation which would thereafter no longer be permitted under the terms of this Zoning Ordinance shall be considered a nonconforming use or structure.